Their Lordships will report their opinion to the Head of Malaysia accordingly.

Appeals dismissed.

Solicitors: *Stephenson, Harwood & Tatham; Speechley, Mumford & Soames; Parker, Garrett & Co.*

TAY CHWEE CHENG v. SINGAPORE SING HUA POEY CHIN ASSOCIATION

[O.C.J. (Ambrose J.) January 12, 1968]
[Singapore — Suit No. 1228 of 1966]

Landlord and Tenant — Premises subject to Control of Rent Ordinance — Possession claimed under s. 15(1)(d) of the Control of Rent Ordinance (Cap. 242).

Possession was claimed under section 15(1)(d) of the Control of Rent Ordinance on the ground that the defendant had been guilty of using or permitting the use of the premises as a common gaming house in contravention of section 4(1)(b) of the Common Gaming Houses Ordinance, 1961.

Held: there was no evidence to show that the defendants had been guilty of using or permitting the use of the premises as a common gaming house in contravention of section 4(1)(a) or (b) of the Common Gaming Houses Ordinance, 1961.

[Editorial Note: On appeal, the Federal Court dismissed it on the ground that the action was misconceived, defendants being an unincorporated association and could not be tenants at law: *Indo Australian Trading Co.* v. *Hin Ann Huay Kuan* [1956] M.L.J. 193 and *Malay Women's Welfare Association* v. *Tan Ek Joo Realty Co.* (1957), 3 M.C. 101.]

CIVIL SUIT.

James Loh for the plaintiff.

T. C. Cheng for the defendant.

Ambrose J.: This action was brought by the plaintiff to recover possession of the premises known as No. 228 Orchard Road, Singapore.

The premises, which were let by the plaintiff to the defendant, were at all material times subject to the Control of Rent Ordinance (Cap. 242). The defendant's tenancy was duly determined on the 30th April, 1966, by a notice to quit in writing dated the 29th March, 1966, and served on the defendant on the 31st March, 1966.

Possession was claimed under section 15(1)(d) of the Control of Rent Ordinance on the ground that the defendant had been guilty of using or permitting the use of the premises as a common gaming house in contravention of section 4(1)(b) of the Common Gaming Houses Ordinance, 1961. The said section 4(1)(b) reads:—

"Any person who permits a place of which he is owner or occupier or of which he has the use temporarily or otherwise to be kept or used by another person as a common gaming house shall be guilty of an offence and shall be liable on conviction to a fine not exceeding six thousand dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment."

Ang Kim Whatt, an Acting Assistant Superintendent of Police, gave the following evidence for the plaintiff. On the 15th July, 1965, a police party led by him raided the premises in question at about 2.20 a.m. and arrested 28 persons for gambling. They were all charged with gaming in a common gaming house in contravention of section 6(1) of the Common Gaming Houses Ordinance. All of them pleaded guilty, were convicted and fined. Two of them were living at the premises. More than half of them were members of the defendant association. No action was taken against the defendant.

Fong Ying Loong, an Assistant Superintendent of Police, testified that no further action was taken against the defendant on the instructions of the Deputy Public Prosecutor.

Lim Eng Peng, who was called by the defendant, gave the following evidence. He was president of the defendant association for the last 18 years. Rule 32 of the rules of the association forbids gambling of any kind on the association's premises. Notices were posted on the premises forbidding gambling. Since he became a member of the association in 1949 he had not seen any form of gambling at the premises. The association had never been charged with any offence. The premises were closed after 12 midnight. He came to know about the incident of the 15th July, 1965, when he received a letter from A.S.P. Fong Ying Loong dated the 8th November, 1965. When he received the letter, investigations were made, but he could not ascertain who the persons who gambled on the night in question were. After receiving the letter, he issued a warning that any member found gambling on the premises would be expelled. No permission was granted by the defendant for the use of the premises for gambling on the night in question.

On the evidence before me, I was not satisfied that the defendant had been guilty of using or permitting the use of the premises as a common gaming house in contravention of section 4(1)(a) or (b) of the Common Gaming Houses Ordinance, 1961. I therefore dismissed the plaintiff's claim with costs.

Claim dismissed.

Solicitors: *Lal Behari Singh; Cheng & Co.*

BUKIT RAJAH RUBBER CO. LTD. v. COLLECTOR OF LAND REVENUE, KLANG

[O.C.J. (Raja Azlan Shah J.) October 12, 1967]
[K.L. — Civil Application No. 2 of 1966]

Land Laws — Compulsory acquisition — Rubber estate land acquired for radio station — Market value — Methods of assessment — Agricultural value — Potential development value — Land Acquisition Act, 1960.

This was a reference under section 38 of the Land Acquisition Act, 1960, in respect of the compulsory acquisition by the Central Government of 50 acres of land under rubber, about 25 years old, belonging to the applicant for a site for Radio Malaysia transmitting station. The land is situated about 3 miles north of Klang town

about 700 yards off the Klang-Meru Road with access to it by a laterite estate road. The land in question is firm, level, and dry, with a slight fall towards its southern boundry, beyond which there is a canal and a small village.

The collector held an inquiry on January 21, 1965 at which the valuer for the estate appeared and claimed on their behalf compensation at the rate of $8,400 per acre. The collector awarded at the rate of $2,400 per acre.

Held: (1) the market value must be based on a rational enquiry of the value of the property to the owner which is an objective assessment of all the surrounding circumstances. Ordinarily the objective assessment would be the price that an owner willing and not obliged to sell might reasonably expect to obtain from a willing purchaser with whom he was bargaining for the sale of the land. The property must be valued not only with reference to its condition at the time of acquisition but also its potential development value;

(2) in this case, having regard to its agricultural value and its inseparable counterpart — the potential development value, the figure of $4,022 per acre would be a fair market value of the land acquired.

Proper method to arrive at a fair market value discussed.

CIVIL APPLICATION.

D. G. Rawson for the applicant.

Haji Mohamed Azmi bin Dato' Kamaruddin (Legal Adviser, Selangor) for the respondent.

Cur. Adv. Vult.

Raja Azlan Shah J.: This is a reference under section 38 of the Land Acquisition Act, 1960, in respect of the compulsory acquisition by the Central Government of 50 acres of land belonging to Bukit Rajah Estate, comprising part of Lot 26, Mukim of Kapar, Klang (approximately 495 acres in area) for a site for Radio Malaysia transmitting station.

The area was gazetted under section 8 of the Act on 5th November 1964 *vide* Selangor G.N. 751, and it is therefore required to determine its 'market value' as on that date.

The land acquired is situated approximately three miles north of Klang town on the Klang-Meru Road and about 700 yards off this road to its left. It has therefore no road frontage, but access to it is *via* a laterite estate road. The main services, electricity, water and telephone are on the road, but they cater for that rubber estate and not for any housing development project. It is about half-a-mile outside Klang Town Council boundary. The land in question is firm, level, and dry, with a slight fall towards the southern boundary. At the time of acquisition it was under rubber belonging to clone (P.B.86) and about 25 years old. It was first tapped in 1948. It is bounded on the south by a canal and Kampong Batu Belah which is a very small village comprised of temporary houses and buildings and covered with rubber and fruit trees, and in the immediate vicinity are smallholdings covered with rubber. It is not situated adjacent to or in the vicinity of any developed area. Running parallel to this boundary is a laterite road which is separated from it by a 15 ft. main drain. There was then no bridge across it. The land is subject to an expressed condition, that is, agricultural purpose.

The Collector of Land Revenue, Klang, held an enquiry on 21st January 1965 at which Mr. J. M. Carter the valuer for the estate appeared on their behalf. They claimed compensation at the rate of $8,400 per acre. The collector's award was made on 30th June 1965 at the rate of $2,400 per acre, based on the land's proximity to Klang-Meru Road, Klang town, the Town Council boundary, its expressed condition, and finally to development areas in the immediate neighbourhood (see para. 8, Form O). It is now said that the collector has based his award purely on its agricultural value and paid no regard to the value of the land as a potential building or industrial site.

At the hearing before us, Mr. Carter, who is no stranger to our courts in land acquisition cases, gave as his considered view the market value of the land acquired, based on the land development potential for urban purposes — probably housing, possibly industry. Mr. Lim Mau Chin, the Government Valuer, gave the market value of the land acquired in terms of its agricultural value, and with that value as a basis he took into consideration the land's remote building potentiality and other special factors. Since both experts held divergent views with regard to the market value, it is therefore incumbent on this court to analyse carefully the value of all the evidence upon which each is based.

Mr. Carter fortified his view by comparing with the urban development along Meru Road which he says has reached the 1½ milestone and the urban development along Kapar Road which he says stretches as far as the 2½ milestone after which the small holdings are encountered. These are of the semi-permanent and temporary nature which he classified as sub-urban. He says that land along Meru Road is more competitive in price than along other roads leading out of Klang town. In arriving at his conclusion he also relies on the general pattern of development north of Klang river. He is of the opinion that development on the north side of Klang river is more probable than on the south side because the general pattern of development in Klang and Port Swettenham in the last six years indicates a definite attention to the north which he says stems from the Klang Straits wharves. These wharves are constructed north of the Klang river. All traffic to those wharves must cross Klang river at Klang, run to Port Swettenham, and re-run to Klang. The present development indicates that there will have to be a by-pass running north of the Klang river, thus avoiding

Port Swettenham and Klang and connecting the Klang wharves with the main arterial road to Kuala Lumpur. That, he says, will be the most logical outcome of the Klang-Port Swettenham and its economic outcome.

It is obvious that the urban development in Klang-Meru Road consists of developed lands, that is, shop-houses, and the latest development in this locality is Meru Gardens, that is, a smallholding consisting of terraced houses situated at the 1¼ milestone. After the second milestone there is no development whatsoever. The area onwards is a green belt — mainly rubber cultivation. That is still the position at the present day. At the third milestone are lands belonging to the rubber estate. At the time of acquisition and even today there is no indication of any permanent building development in the immediate vicinity. It is therefore fallacious to say that there was development in Kampong Batu Belah and the adjoining smallholdings and that the price along Meru Road is more competitive than along other roads leading out of Klang. Development in Klang is centered at Jalan Teluk Gadong and the Eng Ann Housing Estate. These developments are sufficient to meet local demands for housing in the next few years. There are still lands between the land acquired and the town centre remaining undeveloped. It is unlikely that there will be an immediate demand for this land for building purposes. It is also fallacious to say that there is no more land to the north of Klang town that can be developed except the land in question. The belief that a hypothetical by-pass running north of Klang river, by-passing Klang and Port Swettenham, as a guide to the market value of the land acquired appears to be open to no objection if the hypothesis is based on inferences from ascertained facts. No evidence has been led that far beyond a bare assertion from the Antolic plan, and it is difficult to consider this as anything but within the realm of speculation in the remote future, especially as the proposed by-pass has to cut through hundreds of private properties thus entailing vast Government expenditure.

Mr. Carter's second consideration is the evidence of sales of comparable land for urban purposes prior to the date of acquisition. He quoted these two parallels to give some indication how the market fluctuated by the date of actual acquisition. The prices at these sales, it is suggested, were obtained when the market was generally low. One was a sale of Lot No. 2740 held under C.T. 18262 in the Mukim of Bukit Rajah comprising an area of 56.219 acres at $8,000 per acre by Eng Ann Realty (Klang) Ltd. to the Central Electricity Board in May 1962, and another of a sale of Lot No. 2901 in the same Mukim by the same company to Chew Loy Construction Co. of 84.683 acres at $10,000 per acre in November 1962. It must be observed that both these lands are within the Town Board area and were planted with old rubber trees. (See Serial Nos. 1 and 2, Annexure A in Exh. P.1). The first sale, it is observed, is situated very close to existing development in Klang, i.e. shop-houses. There are many housing estates in that locality already in existence and this piece of land is zoned for housing development. It has direct frontage on Meru Road. The second sale is very close to the first sale. It lies near a developed area, in fact behind the shop-houses along Meru Road at a distance of about a quarter-mile. It is accessible through the existing housing estate (towards the south). There are two main roads leading into this land. It is about 300 yards to the Federal highway. It is obvious that these sales are not sales of similar lands in the neighbourhood of the land acquired though they may be relevant as an indication of the general run of compensation awarded.

Mr. Carter also instanced six other sales to indicate the general run of compensation awarded in those cases to serve as a guide in the present case. In the latter part of 1963 and the early part of 1964, Highlands & Lowlands Para Rubber Co. Ltd. sold three pieces of land approximately 28, 50 and 32 acres respectively at $10,000 per acre. These three sales, more or less bounded by Teluk Gadong Road and Langat Road, are situated very close to well developed areas. The lands fronting Teluk Gadong Road are very intensively developed and in fact more developed than the land along Meru Road. There is also development just before the three sales, i.e. Langat Road. These three sales are situated outside the Town Board boundary and are about half-a-mile to the south of Klang town. They are situated in the housing development zone. There is evidence to indicate that the Klang-Port Swettenham complex has a very bright future. In my view the land acquired paled in comparison. It is miles away and is in fact in a different locality. It cannot therefore be said that these three sales afford a valuable indication of the market value of the land acquired. These are not sales of similar lands in the same locality.

The other three sales were effected by Bukit Rajah Rubber Co. Ltd. also in the latter part of 1963 and the early part of 1964. They are all agricultural land planted with old rubber and have road frontage on Federal highway, a main arterial highway between Kuala Lumpur and Port Swettenham. These areas definitely command better values and they can hardly be described as land precisely similar in all circumstances and conditions to the land acquired. One lot of approximately 90 acres, partly within and partly without the Town Board boundary, was sold at $12,000 per acre. It has two road frontages, one on Federal highway and the other on Batu Tiga Road. The other sale comprising approximately 72 acres was sold at $17,500 per

acre. This land is just outside the Town Board boundary and adjoins the Eng Ann Housing Estate a developed area. It is in close proximity to Klang town and is about 400 ft. from Federal highway. The last piece of land of approximately 37 acres is partly within and partly without the Town Board boundary and adjacent to Eng Ann Housing Estate and in close proximity to Klang town. It has frontage to the Federal highway on either side. This lot was sold at $9,000 per acre because the land is occupied by squatter tenants holding under leases for 30 years from 1962 at nominal rents.

Another factor which commends itself to Mr. Carter's opinion is the value of the land acquired. He says that the acquisition introduces an artificial situation which would not be created voluntarily by a prudent land-owner. He says that if the land acquired was placed in the open market in blocks of 50 acres the usual method is to start at the road frontage and work inwards. Under this method he says that the land acquired should find a ready market within three years at a price of not less than $10,000 per acre. He worked out a comparable price as follows (see p. 3 of his report, Exh.P.1).

Selling price in 3 years	$10,000 per acre
Present value of $1 in 3 years @ 6%	8,396
Present value of land	$ 8,396 per acre
(Say)	$ 8,400 per acre

He gave a compound interest at 6% per year which he says is the interest rate adopted by Government and which is generally considered to be acceptable. In evidence he said that it is almost an equal choice whether one would continue development backwards or further along the road, but the inclination is to develop backwards because of the roads that have to be constructed to the rear boundary of the land. He gives the period of deferment at three years based on experience and reasonableness.

Mr. Lim's assessment of the market value is $2,400 per acre. He works on this basis. He first assessed the agricultural value of the land at $1,400 per acre. He then took into account the remote building potentiality of the land and other features which he assessed at $1,000 per acre.

In order to arrive at the agricultural value he used the investment method of valuation. He first estimated the yield of rubber over the remaining economic life of the trees which he estimated to be 10 years and arrived at the average yield of 1,000 lbs. per acre per year after having taken into account the production figures provided by the estate (see Exh.B13A). He says that the life expectancy of a rubber tree is 25 years and they are past their peak period which is from 12 to 20 years (see graph, Exh. B13B). Next, he estimated the net profit per lb. which is price minus cost. In order to arrive at the net profit he had to estimate the price of rubber and cost of production. He therefore calculated the average price of rubber 12 months prior to the material date (see Exh.D13D) and arrived at the figure of 65.1 cents per lb. For purposes of calculation he took the round figure 65. Regarding cost, he analysed the cost of ten big companies in the country (see Exh.D13E). These companies produced about 1,000 lbs. of rubber and their costs varied from 34 to 47 cents per lb. However, Mr. Lim had considered that the estates had submitted figures on costs on details of rubber as given by Malayan Estates Ltd. Their costs varied from 39 cents in 1962, 38 cents in 1963, and 37 cents in 1964. He considered the cost of 38 cents to be reasonable, so he subtracted 38 from 65 (representing the price of rubber per lb.) and arrived at the figure of 27 cents which represents the net profit. This figure of 27 cents he multiplied by the yield of 1,000 lbs., giving a net income of $270. In terms of valuation percentage he capitalised at 10 years purchase at 12% remunerative rate and 3% sinking fund which is adjusted for tax at 4%, and arrived at a figure of $1,018. To this figure he added the reversion of the site which was estimated at $700 per acre which again must be deferred for 10 years at 6½%. He arrived at a figure of $371. The agricultural value of the land is therefore $1,018 + $371 = $1,389, say $1,400 per acre (see Appendix A, Exh.D11).

Mr. Carter, on the other hand, is of the view that the life expectancy of a rubber tree is 31 years and therefore the remaining tapping life is 15 years. With regard to the yield of rubber over the remaining years he puts it at 1,170 lbs. per acre per year. Unfortunately no data is given to support this figure. He took the average rubber price on the basis of Mr. Lim's calculation, i.e. 65.1 cents, and from that figure he subtracted the actual cost of production of Bukit Rajah Estate, i.e. 37.38 cents. This figure he multiplied by the yield of 1,170 lbs., giving a net profit of $324. Capitalising at 15 years purchase at 12% remuneration rate and 3% sinking fund, he arrived at a figure of $1,863. To this figure he added the reversion development value of $10,000 per acre, and taking the present value of $1 for 15 years at 6% he arrived at a figure of $6,000 per acre. (See Exh.P16B).

Mr. Lim took the following factors into consideration in determining the remote building potential value:—

(a) The land is under the cultivation of rubber and not immediately ripe for development.

(b) It is zoned for agricultural use. Before the land can be developed it is necessary to convert its agricultural title into a building one and obtain planning permission. Whether this is forthcoming is a risk a prudent purchaser would take into account.

(c) At time of acquisition and even today there is no indication of any permanent building development in the immediate vicinity.

(d) The land has no metalled road frontage and access is *via* the estate road. The use of the estate road which is a private road will entail additional cost. The acquiring authority intends to build a bridge across the ditch to provide access.

(e) The land is sited outside the Klang Town Board boundary.

(f) Water and electricity can be provided.

(g) The land acquired comprises an area of 50 acres. A prospective purchaser buying a piece of land of this size would invariably expect a reduction in value as an inducement and provision for sufficient margin of profit for the risk undertaken.

Mr. Lim also cites evidence of sales of four smallholdings situated very close to the land acquired as providing good indication of value in the immediate neighbourhood. The only difference, he says, between these sales and the land acquired is in their size and their similarity is in their use, situation, quality, and potentiality. A share of 81/361 of Lot 223 comprising 4.512 acres which is directly opposite the land acquired — to the south of it — being separated from it by the main drain and a laterite road frontage, was conveyed to a relative in April 1964 at $1,976 per acre. The land is level and is under rubber, coffee and fruit trees. It has a temporary house. A share of ¼ of Lot 233 comprising 4.825 acres was conveyed to a relative in January 1963 at $1,244 per acre. The land is immediately to the south of Lot 233. It is level and has frontage on to a laterite road. It is covered with fruit trees and some rubber. Lot 838 comprising 4.819 acres was sold in the open market in January 1964 for $1,600 per acre. Lot 845 comprising 3.881 acres was also sold in the open market in November 1963 at $773 per acre. Both these lands are situated to the south-west of the land acquired. They are level and have no road frontage but are accessible by foot-paths. They are covered with old rubber.

The first two sales cannot be said to represent the value of the lands which a willing seller might be expected to realise in the open market. Although these sales might be relevant, their probative value would obviously depend upon several main circumstances *viz.* whether the price obtained represented the proper market value of that property and how far the property is comparable with the land acquired. The other two sales, though in the open market, are dissimilar in all essential characteristics.

Another instance of sale is the acquisition in July 1964 of an area of 1.5 acres of Lots 752 and 753 about two miles from the land acquired. The compensation was the owner's claim of $3,500 per acre. This is a back-lying piece of land with no road frontage and on the southern side of the ditch. It is said to have a better site by virtue of its proximity to Kapar Road which is a built-up area with light industrial works. In my view, the circumstances are very different from the land acquired. There is no parallel whatsoever.

In my opinion, no hard and fast rule can be laid down regarding the method to be adopted for assessing the proper market value of the land acquired. In the last analysis each case must be considered in the light of its special features. I have considered "evidence of sales of the same land" as the safest guide in arriving at a fair market value. Of this, there is none. I have also considered "evidence of sales of similar land in the neighbourhood" and I have arrived at the conclusion that after making due allowance for all peculiar circumstances these sales can only afford assistance in arriving at the proper market value. It is plain that evidence of previous sales of neighbouring lands can seldom be obtained which shall be precisely parallel in all those circumstances to the sale of the land acquired. Differences, though of varying degrees, must always exist. What precise allowances should be laid down for these differences is not a matter which can be reduced to any rigidity. With regard to expert opinions that were adduced, I would like to lay emphasis on the judgment of earlier decided cases that generally they have very little probative value unless supported by, or coincide with, other evidence. In my view, the market value must be based on a rational enquiry of the value of the property to the owner which is an objective assessment of all the surrounding circumstances. Ordinarily, the objective assessment would be the price that an owner willing and not obliged to sell might reasonably expect to obtain from a willing purchaser with whom he was bargaining for the sale of the land. The property must be valued not only with reference to its condition at the time of acquisition but also its potential development value.

In the light of these observations, I take the view that the proper method to arrive at a fair market value of the land acquired, taking all relevant considerations, is to assess its existing value with its inseparably essential element, i.e. its potential development value. I have considered the written opinions of both assessors, and I think they are more realistic insofar as they regarded the land as agricultural land and its inseparable counterpart — the potential development value. After discussion, I agree that the figure of $4,022 per acre would be a fair market value of the land acquired. This amount is arrived at on the following basis: of the figures rendered by the government valuer, Mr. Carter,

and the agents of Bukit Rajah Estate concerning the unexpired period of life expectancy, we accept the figure of 13 years given by the estate's agents as the most acceptable of the three as they should have accurate and personal knowledge of the economic tapping life of the trees than the other two witnesses. With regard to the average annual yield per acre, we are of the opinion that as all the figures given by the government valuer, Mr. Carter and the agents (the agents in their statement quote the yield for 1964 at the estimated figure of 965 lbs. which they explained in their letter dated 6th November 1964 is the overall figure for the whole estate and not for the particular area acquired) are estimates, in the absence of any positive proof we are inclined to accept the figure of 1,000 lbs. as a reasonable one. As the income is an immediate and assured income, we have given the capitalisation rate at 7½% (remunerative rate). From our calculation (stated below) we have arrived at a figure of $1,992 per acre which represents the existing value of the land acquired.

Existing Use Value.

Estimated production, 1,000 lbs.		
Estimated net profit, 27.72 cts. per lb. = $277.20	(Say) $	277.00
Years purchase for 13 years @ 7½% and 3%	x	7.193
	(Say)	$1,992 00

We are of the opinion that the potential development value of the land acquired at which any calculation may reasonably be based is $7,000 per acre, after having taken the following factors into consideration:—

(a) The comparative figures of sales produced as evidence by both sides cannot be accepted as fully comparable to the land acquired and therefore can only be accepted as a guide to market conditions prevailing at the time of acquisition.

(b) Evidence has shown that the nearest rural development along Meru Road is about 1½ miles from the acquired area.

(c) The acquired land is situated about 700 yards from the main Meru Road and the only access at the time of acquisition was an estate laterite road which is a private road and which may be used on certain conditions and payment of charges for maintenance.

Our calculation is reproduced below. We are of the view that reversion to development use is uncertain, thereby involving a certain amount of risks. Therefore we consider that the reversion should be capitalised at a higher rate of 10%. Further, the period of deferment is, in our opinion, what a prudent purchaser would expect. We have based it at 13 years.

Reversionary Value.

Reversion to development value per acre,	$7,000.00	
Present value of $1 for 13 years @ 10%,	0.29	$2,030.00.

There will therefore be judgment for the applicant and costs. The respondent shall pay interest on the excess sum at the rate of 6% per annum under section 48 of the Act.

Mr. Ong Yeow Kay and Mr. T. R. Marks, Assessors, concur.

Further, I direct that each assessor shall receive a fee of $100 per day for the three days of this hearing.

Judgment for the applicant.

Solicitors: *Shearn, Delamore & Co.*

LAN YOU TIMBER CO. v. UNITED GENERAL INSURANCE CO. LTD.

[O.C.J. (Raja Azlan Shah J.) October 24, 1967]
[K.L. — Civil Suit No. 565 of 1967]

Arbitration — Claim for workmen's compensation — Denial of liability by insurers — Arbitration clause in policy of insurance — Whether court can hear proceedings before arbitration — Arbitration Ordinance, 1952, s. 5.

Workmen's Compensation — Insurance against personal injuries — Arbitration clause — Whether denial of liability amounted to repudiation — Workmen's Compensation Ordinance, 1952, s. 30.

The defendants insured plaintiff's employees against permanent injuries by accident arising out of and in the course of their employment and agreed to indemnify the plaintiffs in the event of their being liable to pay compensation under the Workmen's Compensation Ordinance.

An employee of the plaintiffs was injured, such injury arising out of and in the course of his employment. It was alleged that the said employee was a winch driver at the material time. The plaintiffs were assessed $7,020 as compensation under the Workmen's Compensation Ordinance, and the same was forwarded to the defendants for settlement. The defendants denied liability because they alleged that the injured employee was not covered by their policy as he did not belong to the category of employees covered by the policy. The plaintiffs then filed their writ against the defendants claiming for idemnity; and the defendants took out a summons asking that all further proceedings in this action be stayed under section 5 of the Arbitration Ordinance on the ground that the insurance policy contained a clause providing for arbitration and that an award obtained under it should be a condition precedent to any action against them. The plaintiffs urged that the matter should not be referred to arbitration because the denial of liability by the defendants was tantamount to a repudiation of the policy including the arbitration clause.

Held: under section 5 of the Arbitration Ordinance the court must hold the parties to their contract, provided they submit to arbitration, unless some sufficient reason, adequate in the circumstances, justified its setting aside the terms of the contract and then exercising a discretion in favour of allowing the action to proceed The onus is on the person opposing the stay, in this case the plaintiffs, and they had not shown sufficient reasons why it should not be referred to arbitration.